

MINUTES
MALIBU CITY COUNCIL
SPECIAL MEETING
JUNE 21, 2003
COUNCIL CHAMBERS
9:30 A.M.

CALL TO ORDER

Mayor Kearsley called the meeting to order at 9:40 a.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Ken Kearsley, Mayor Pro Tem Sharon Barovsky, Councilmembers Joan House, Jeffrey Jennings and Andrew Stern.

ALSO PRESENT: Katie Lichtig, City Manager; Christi Hogin, City Attorney; Victor Peterson, Environmental & Community Development Director/Building Official; Scott Albright, Senior Planner; Ed Knight, Interim Planning Manager; Barbara Cameron, Grant Consultant; and Lisa Pope, City Clerk.

APPROVAL OF AGENDA

MOTION Councilmember House moved and Councilmember Stern seconded a motion to approve the agenda. The motion carried unanimously.

FLAG SALUTE

Georgianna McBurney led the Pledge of Allegiance.

REPORT ON POSTING OF AGENDA

City Clerk Pope reported that the agenda for the meeting was properly posted on June 19, 2003.

WRITTEN AND ORAL COMMUNICATIONS FROM THE PUBLIC

None.

ITEM 1 PUBLIC HEARING

A. Malibu Bay Company Development Agreement – Applicant: Malibu Bay Company; Owner: Malibu Bay Company; Location: Civic Center, Trancas Canyon, and Point Dume areas

Staff recommendation: Receive the staff report, open the public hearing and take public comment, consider input from the Planning Commission and Environmental Review Board, discuss the Malibu Bay Company Development Agreement, the related entitlements, and the Draft Environmental Impact Report and provide direction to staff regarding proposed amendments to the public benefits.

City Attorney Hogin indicated staff was available to respond to questions regarding the proposals related to the Malibu Bay Company Development Agreement. She requested Council direction as to whether the Council wished to pursue Plan B. She stated the Malibu Bay Company (MBC) had rejected the possibility of the donation agreement being reinstated if the City was unable to purchase the Chili Cook-Off site. She stated discussions had ensued regarding the possibility of the remainder of the agreement being contingent upon the purchase of the Chili Cook-Off site. She discussed the urgent timing of the development agreement based on the current willing seller of the Chili Cook-Off site, State grant applications and the urgency of dealing with the City's water issues.

Grant Consultant Cameron discussed the major components of the grant including acquisition of the land for stormwater clean up and the wastewater treatment facility. She reminded the Council that the City already had \$1 million for the Civic Center project. She explained that the protection and restoration of Malibu Creek and Lagoon and Surfrider Beach areas have been a high priority to the State. She discussed other potential sources of funding. She discussed Proposition 50 funds.

Mayor Kearsley discussed the use of Cameron Park by Malibu children.

Steve Uhring thanked the Mayor for his participation in the Malibu Community Action Network (CAN) meeting. He referenced the June 2, 2003 letter from the Coastal Conservancy regarding the purchase of the Civic Center property and improved water quality. He requested the community be made aware of any additional communications from the Coastal Conservancy.

Ozzie Silna discussed some of the issues raised at the Malibu CAN meeting including time constraints regarding funding for the project. He

stated the original development agreement still existed and the initial Environmental Impact Report (EIR) process had not yet been completed. He discussed the issues that had not been addressed with regard to the old development agreement including traffic mitigation, the requirement of the General Plan (GP) to have the implementation of a specific plan, and the issue of cumulative impact and liquefaction in the entire Civic Center area. He indicated he did not believe that the issue of excessive development in the Trancas residential area was discussed at the meeting. He discussed the requirement for water storage water in the City, which he indicated had not been adhered to since he had been in the City. He discussed the underlying concern to not to have the City "sewered."

Bill Carson stated he would love the City to purchase the Chili Cook-Off site, but stated he was opposed to the proposed Floor Area Ratio (FAR). He suggested Point Dume and Trancas not be included in the development agreement. He expressed concern regarding the City building a sewer system in the Civic Center. He questioned who would be able to utilize the sewer system. He questioned the economics of the proposed wastewater treatment system.

Sandra Genis discussed the desire to place the matter on the November 2003 ballot. She discussed California Environmental Quality Act (CEQA) guideline 15088.5. She indicated the EIR would have to be recirculated. She discussed the requirement that an EIR be voted upon within a year of when it was first put out, although the developer could agree to an extension. She stated there were internal inconsistencies between the EIR and Response to Comments. She stated the EIR failed to meet requirements of CEQA in examining other plans.

Ted Vaill asked if appraisals had been done to evaluate the \$25 million price on the Chili Cook-Off site. He questioned whether State funding was contingent upon a neutral appraisal. He stated he was skeptical, with the State in such financial distress that there was grant money lying around for Malibu. He asked if the 5,000-square foot community center was to be part of the Heathercliff development. He inquired whether the Winter Canyon site would be discontinued or improved under the proposal. He indicated his understanding that the deal was unchanged regarding the donation of the Smith site as open space or the Knoll property as a no future development site and that the donation of Trancas/Pacific Coast Highway property would remain.

Richard Carrigan thanked the Mayor for meeting with him to discuss Plan B. He discussed the changes to commercial development. He indicated

Plan B would allow the City to have a treatment facility that would provide the City with clean water. He stated the City should not move forward with Plan B until the City had the necessary funds.

Patt Healy stated Plan A required a finding of overriding consideration. She questioned the public benefit offered in Plan B. She stated it would not be the end of the world if the State imposed treatment regulations. She stated she was happy about the opportunity, but questioned whether MBC was a willing seller with all the strings attached.

Bob Purvey discussed his concern regarding clean water in the Lagoon. He discussed studies regarding Malibu Creek and pollution to the beach. He encouraged the Council to pursue the purchase of the Chili Cook-Off site and also indicated the need to address public health and safety issues.

John Mazza was not present at the time of the hearing.

Efrom Fader deferred his time to Lucile Keller.

Lucile Keller, representing the Malibu Township Council, discussed the Town Center definition regarding wastewater treatment. She discussed the treatment site proposed on the Chili Cook-Off site in Plan B. She indicated opposition to a collector treatment facility plant. She questioned what would happen to effluent in the winter. She indicated support for purchase of the Chili Cook-Off site to clean Lagoon waters, but not for a collector wastewater system. She discussed the proposed floor area ratios allowed under the development agreement. She stated the Niles' alternative for the Trancas commercial site needed to be reviewed. She urged the Council to uphold the Planning Commission denial and not approve the development agreement.

Max Gail discussed open negotiations and the importance of the community's input. He discussed the urgency of the matter.

Paul Grisante discussed Plan B and indicated points he found positive in the City's negotiations, including the fact that there were two rental properties on Chili Cook-Off site. He indicated the environmental impact in Plan B was less than under Plan A.

Suzanne Guldemann expressed concern with the rushed timing. She asked the legal requirements for placing the matter on the November 2003 ballot. She expressed concern about the proposed experimental wastewater treatment facility.

Marlene Matlow indicated support for the \$1 million endowment for an urgent care center. She explained that the urgent care center was non-profit. She stated that Friends of the Malibu Urgent Care Center were funding increased hours beginning July 1, 2003. She questioned the benefit of a 5,000-square foot community center. She stated the future populations of Malibu would require more commercial development.

Georgianna McBurney commended the Council for its efforts to meet the needs of the entire community. She indicated support for a treatment plant and park in the Civic Center, ball fields and an urgent care center.

Helene Eisenberg congratulated the Council. She stated that \$1 million for the urgent care center was wonderful. She was bothered by building on Point Dume and increasing traffic. She hoped that this would finally be solved and that most of the people in Malibu would be helped.

Rich Fox indicated support for the Planning Commission's decision to recommend denial of the development agreement. He expressed concern that Plan B would be worse than Plan A. He asked if there was public benefit in Plan B.

Grant Consultant Cameron explained the requirements for appraisal of the property to obtain grant funds. She stated the State budget would have virtually no effect on Proposition 50 funding. She discussed the Lagoon Task Force study.

Mayor Pro Tem Barovsky clarified that the money the City was seeking was not included in the State general fund. Grant Consultant Cameron explained that the funds come from grant funding.

Mayor Pro Tem Barovsky questioned when a commitment for these grants could be put on the table. Grant Consultant Cameron indicated a tentative schedule.

Mayor Pro Tem Barovsky expressed concern about the necessary comfort level. She asked if the City could get a commitment before final vote on the development agreement.

In response to Mayor Kearsley, Grant Consultant Cameron stated she did not believe the matter would be placed before the Coastal Conservancy Board without the Council taking action on the matter and placing it on the ballot.

City Attorney Hogin indicated that she could not imagine approving a development agreement if the City did not have the money to purchase the Chili Cook-Off site. She explained that if the Council called an election, it could be cancelled if the City did not have the money to purchase the Chili Cook-Off site. She stated that the City could talk to the State to explain the situation. She indicated that she understood the need to figure out the contingencies and timing and stated she would nail down the details before the Council took action.

Mayor Kearsley explained the process of demineralization. He discussed the incentives to recycle water.

Councilmember Stern indicated support for Plan B. He stated that the Council's focus was to address the public health and safety of Malibu's residents. He stated that there was no Plan C on the table. He discussed the rental property on the Chili Cook-Off site and the potential to support debt.

Mayor Pro Tem Barovsky discussed water discharge in the Civic Center. She asked if the Point Dume property would require a new EIR for increased use. She asked if the Environmental Impact Report would be recirculated if new significant environmental impacts were found.

City Attorney Hogin discussed the issues surrounding the environmental impacts. She stated that Point Dume development was nothing more than can be currently built under the Interim Zoning Ordinance (IZO) and the General Plan.

Mayor Pro Tem Barovsky discussed the traffic generated at Bluffs Park during sports seasons. In response to Ms. Guldemann, she indicated that a new package plant was recently installed at Malibu West that could be viewed as an example. She stated she had suggested that \$1 million be set aside as an endowment for an urgent care center. She expressed concern about the City plunging forward and the need to be sure that the City could secure the necessary funding.

Councilmember House explained that under Plan B MBC would be donating: 7.1 acres of the Smith parcel to remain undeveloped; 4.21 acres of Winter Canyon parcel; 4.36 acres on the Knoll property to remain undeveloped; 10 acres at Trancas to remain undeveloped; \$2.5 million cash donated to City; and a 5000 square foot community room at Point

Dume. She stated that the City was concerned about a community center, senior center and teen center.

In response to Councilmember House, City Attorney Hogin indicated that the changes would go back to the Planning Commission. She discussed the benefits of a November 2003 election. She stated staff would publish a comprehensive calendar in the next several days.

Councilmember House asked whether a new EIR would have to be done on the Point Dume parcel since the use had changed. She discussed allowable development on the Point Dume parcel. City Attorney Hogin stated staff would review the EIR to determine if Point Dume had been appropriately analyzed. She stated the EIR for Plan A was complete. She indicated staff was evaluating whether Plan B raised significant changes.

Councilmember Jennings discussed the various plans. He stated he was upset with a loss of open space on Point Dume Mesa. He indicated that the City would have to make a choice between the alternatives, none of which were entirely palatable. He indicated that Plan B provided the City with the opportunity to do something about cleaning up the water. He stated it was critical to move forward with the development agreement.

Mayor Kearsley discussed the engineering problems related to development. He expressed excitement about creating an ocean in balance. He stated the proposal would help solve problems with water pollution. He stated that there was a need to put politics aside and solve the problem. Mayor Kearsley suggested City Attorney Hogin go back and discuss the reversion clause with MBC.

Mayor Pro Tem Barovsky indicated her desire to direct the City Attorney to return to MBC and ask them to reconsider the reversion clause. She suggesting reducing the time the property would be tied up to whatever amount MBC thought was reasonable.

City Attorney Hogin explained what would happen if the City did not purchase the Chili Cook-Off site.

CONSENSUS

By consensus, the Council directed the City Attorney to return to MBC, ask them to reconsider the reversion clause and discuss the time period the property would be tied up.

In response to Mayor Pro Tem Barovsky, City Attorney Hogin explained the negotiation process. She stated that indications were good regarding the community center and loosening up the money so the City had more control over it.

Mayor Pro Tem Barovsky thanked MBC for keeping the dialogue going.

Councilmember Jennings discussed making money potentially available for an urgent care facility. He discussed the ball fields on Bluffs Park. City Attorney Hogin explained that the Council would set priorities for use of the cash.

Councilmember Stern asked the public speakers to remember the lessons learned from the Lunita Pacific litigation and development.

In response to Councilmember House, City Manager Lichtig explained that staff had asked for a preliminary review of the Chili Cook-Off site. She introduced Norm Hantsche, Questa Engineering.

In response to Councilmember House, Mr. Hantsche discussed hydrology on Winter Canyon. He stated that a model was created that predicted the amount of rise in the water at Winter Canyon. He stated the hydrology was thoroughly summarized in the EIR.

Mayor Kearsley discussed the wastewater treatment models for Winter Canyon.

Mr. Hantsche explained that conceptually, wastewater would be treated at the central Chili Cook-Off location and then would be dispersed to other locations.

In response to Councilmember House, Richard Leighton, Assistant Professor of Hydrogeology at Cal State Fullerton and consultant for Envicom, discussed the hydrology modeling at the Trancas and Winter Canyon sites. He stated MBC was proposing to put no additional water into Winter Canyon and that the conditions were stable. He stated that there should be no added impact to Winter Canyon. He explained liquefaction. He discussed modeling conducted in the Trancas area. He stated water would not cause any impacts.

Councilmember House asked if Winter Canyon would be effected by increased development and about the effects of El Nino on the water level.

Mr. Leighton stated there was historical evidence that El Nino did not adversely impact water levels.

In response to Mayor Kearsley, Mr. Leighton stated that salt intrusion was an issue. He discussed salt intrusion as it related to water levels.

In response to Councilmember House, Liz Culhane, Crain and Associates, explained the conduct of traffic counts. She stated that the conclusions in the EIR were that there would be six significant traffic impacts with Phase 1 and 10 significant impacts in Phase 2. She stated all impacts would be reduced to a level of insignificance with mitigation. She indicated Plan B would reduce traffic impacts in the Civic Center area. She stated that the Point Dume area would have to be reviewed. Ms. Culhane explained that traffic modeling was based on standard engineering practices and utilized CEQA guidelines. She indicated that all of the Planning Commission's concerns were addressed in the hearings.

ADJOURN At 12:12 p.m., Mayor Pro Tem Barovsky moved and Councilmember Stern seconded a motion to adjourn. The motion carried unanimously.

Approved and adopted by the City Council of
the City of Malibu on January 12, 2004.

KENNETH KEARSLEY, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)